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## A BILL FOR AN ACT

RELATING TO CONDOMINIUM ASSOCIATIONS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 514B-32, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3           "(a) A declaration shall describe or include the  
4 following:

5           (1) The land submitted to the condominium property regime;

6           (2) The number of the condominium map filed concurrently  
7 with the declaration;

8           (3) The number of units in the condominium property  
9 regime;

10          (4) The unit number of each unit and common interest  
11 appurtenant to each unit;

12          (5) The number of buildings and projects in the  
13 condominium property regime, and the number of stories  
14 and units in each building;

15          (6) The permitted and prohibited uses of each unit;

16          (7) To the extent not shown on the condominium map, a  
17 description of the location and dimensions of the



1 horizontal and vertical boundaries of any unit. Unit  
2 boundaries may be defined by physical structures or,  
3 if a unit boundary is not defined by a physical  
4 structure, by spatial coordinates;

5 (8) The condominium property regime's common elements;

6 (9) The condominium property regime's limited common  
7 elements, if any, and the unit or units to which each  
8 limited common element is appurtenant;

9 (10) The total percentage of the common interest that is  
10 required to approve rebuilding, repairing, or  
11 restoring the condominium property regime if it is  
12 damaged or destroyed;

13 (11) The total percentage of the common interest, and any  
14 other approvals or consents, that are required to  
15 amend the declaration. Except as otherwise  
16 specifically provided in this chapter, and except for  
17 any amendments made pursuant to reservations set forth  
18 in paragraph (12), the ~~[approval of the owners of]~~  
19 declaration may be amended at any time by the vote or  
20 written consent of unit owners representing at least  
21 sixty-seven per cent of the common interest ~~[shall be~~



1 ~~required for all amendments to the declaration;],~~  
2 unless the declaration is amended by the unit owners  
3 to require a higher percentage;  
4 (12) Any rights that the developer or others reserve  
5 regarding the condominium property regime, including,  
6 without limitation, any development rights, and any  
7 reservations to modify the declaration or condominium  
8 map. An amendment to the declaration made pursuant to  
9 the exercise of those reserved rights shall require  
10 only the consent or approval, if any, specified in the  
11 reservation; and  
12 (13) A declaration, subject to the penalties set forth in  
13 section 514B-69(b), that the condominium property  
14 regime is in compliance with all zoning and building  
15 ordinances and codes, and all other permitting  
16 requirements pursuant to section 514B-5 and chapter  
17 205, including section 205-4.6 where applicable. In  
18 the case of a project in the agricultural district  
19 classified pursuant to chapter 205, the declaration,  
20 subject to the penalties set forth in section 514B-  
21 69(b), shall include an additional statement that



1           there are no private restrictions limiting or  
2           prohibiting agricultural uses or activities in  
3           compliance with section 205-4.6. In the case of a  
4           property that includes one or more existing structures  
5           being converted to condominium property regime status,  
6           the declaration required by this section shall  
7           specify:

8           (A) Any variances that have been granted to achieve  
9           the compliance; and

10          (B) Whether, as the result of the adoption or  
11          amendment of any ordinances or codes, the project  
12          presently contains any legal nonconforming  
13          conditions, uses, or structures.

14          A property that is registered pursuant to section  
15          514B-51 shall instead provide the required declaration  
16          pursuant to section 514B-54. If a developer is  
17          converting a structure to condominium property regime  
18          status and the structure is not in compliance with all  
19          zoning and building ordinances and codes, and all  
20          other permitting requirements pursuant to section  
21          514B-5, and the developer intends to use purchaser's



1 funds pursuant to the requirements of section 514B-92  
2 or 514B-93 to cure the violation or violations, then  
3 the declaration required by this paragraph may be  
4 qualified to identify with specificity each violation  
5 and the requirement to cure the violation by a date  
6 certain."

7 SECTION 2. Section 514B-83, Hawaii Revised Statutes, is  
8 amended by amending subsection (a) to read as follows:

9 "(a) A developer's public report shall contain:

10 (1) The name and address of the project, and the name,  
11 address, telephone number, and electronic mail  
12 address, if any, of the developer or the developer's  
13 agent;

14 (2) A statement of the deadline, pursuant to section  
15 514B-89, for completion of construction or, in the  
16 case of a conversion, for the completion of any  
17 repairs required to comply with section 514B-5, and  
18 the remedies available to the purchaser, including but  
19 not limited to cancellation of the sales contract, if  
20 the completion of construction or repairs does not  
21 occur on or before the completion deadline;



- 1 (3) A breakdown of the annual maintenance fees, which  
2 includes the annual reserve contributions based on a  
3 reserve study, and the monthly estimated cost for each  
4 unit, certified to have been based on generally  
5 accepted accounting principles, and a statement  
6 regarding when a purchaser shall become obligated to  
7 start paying the fees pursuant to section 514B-41(b);
- 8 (4) A description of all warranties for the individual  
9 units and the common elements, including the date of  
10 initiation and expiration of any such warranties, or a  
11 statement that no warranties exist;
- 12 (5) A summary of the permitted uses of the units and, if  
13 applicable, the number of units planned to be devoted  
14 to a particular use;
- 15 (6) A description of any development rights reserved to  
16 the developer or others;
- 17 (7) A declaration, subject to the penalties set forth in  
18 section 514B-69(b), that the project is in compliance  
19 with all county zoning and building ordinances and  
20 codes, chapter 205, including section 205-4.6 where  
21 applicable, and all other county permitting



1 requirements applicable to the project, pursuant to  
2 sections 514B-5 and 514B-32(a)(13); and  
3 (8) Any other facts, documents, or information that would  
4 have a material impact on the use or value of a unit  
5 or any appurtenant limited common elements or  
6 amenities of the project available for an owner's use,  
7 or that may be required by the commission."

8 SECTION 3. Section 514B-108, Hawaii Revised Statutes, is  
9 amended by amending subsection (e) to read as follows:

10 "(e) The bylaws may be amended at any time by the vote or  
11 written consent of at least sixty-seven per cent of all unit  
12 owners. Any proposed bylaws together with the detailed  
13 rationale for the proposal may be submitted by the board or by a  
14 volunteer unit owners group. If submitted by that group, the  
15 proposal shall be accompanied by a petition signed and dated by  
16 not less than twenty-five per cent of the unit owners as shown  
17 in the association's record of ownership. The petition shall be  
18 valid only if submitted within one hundred twenty days of the  
19 earliest signature. The proposed bylaws, rationale, and ballots  
20 for voting on any proposed bylaw shall be mailed by the board to  
21 the owners at the expense of the association for vote or written



1 consent without change within thirty days of the receipt of the  
2 petition by the board. The vote or written consent, to be  
3 valid, must be obtained within three hundred sixty-five days  
4 after mailing for a proposed bylaw submitted by either the board  
5 or a volunteer unit owners group. If the bylaw is duly adopted,  
6 the board shall cause the bylaw amendment to be recorded. The  
7 volunteer unit owners group shall be precluded from submitting a  
8 petition for a proposed bylaw that is substantially similar to  
9 that which has been previously mailed to the owners within three  
10 hundred sixty-five days after the original petition was  
11 submitted to the board.

12 This subsection shall not preclude any unit owner or  
13 volunteer unit owners group from proposing any bylaw amendment  
14 at any annual association meeting."

15 SECTION 4. Section 514B-121, Hawaii Revised Statutes, is  
16 amended as follows:

17 1. By amending subsection (c) to read:

18 "(c) Special meetings of the association may be called by  
19 the president, a majority of the board, or by a petition to the  
20 secretary or managing agent signed and dated by not less than  
21 twenty-five per cent of the unit owners as shown in the





1 association's record of ownership; provided that if the  
2 secretary or managing agent fails to send out the notices for  
3 the special meeting within fourteen days of receipt of the  
4 petition, the petitioners shall have the authority to set the  
5 time, date, and place for the special meeting and to send out  
6 the notices and proxies for the special meeting at the  
7 association's expense in accordance with the requirements of the  
8 bylaws and of this part; provided further that a special meeting  
9 based upon a petition to the secretary or managing agent shall  
10 be set no later than sixty days from receipt of the petition.  
11 The petition shall be valid only if submitted within one hundred  
12 twenty days of the earliest signature."

13 2. By amending subsection (e) to read:

14 "(e) All association meetings shall be conducted in  
15 accordance with the most recent edition of Robert's Rules of  
16 Order Newly Revised. Notwithstanding any provision to the  
17 contrary in the association's declaration or bylaws or in  
18 subsection (b), electronic meetings and electronic, machine, or  
19 mail voting shall be authorized:

20 (1) During any period in which a state of emergency or  
21 local state of emergency, declared pursuant to chapter



1           127A, is in effect in the county in which the  
2           condominium is located;

3           (2) For any association meeting for which notice was given  
4           while a state of emergency or local state of  
5           emergency, declared pursuant to chapter 127A, was in  
6           effect for the county in which the condominium is  
7           located but is no longer in effect as of the date of  
8           the meeting; provided that the meeting is held within  
9           sixty days of the date the notice was first given;  
10          ~~[or]~~

11          (3) For any electronic, machine, or mail voting for which  
12          notice of voting has been sent while a state of  
13          emergency or local state of emergency, declared  
14          pursuant to chapter 127A, was in effect for the county  
15          in which the condominium is located but is no longer  
16          in effect as of the deadline for the electronic,  
17          machine, or mail voting; provided that the deadline is  
18          within sixty days of the date the notice was first  
19          sent; or

20          ~~[(3)]~~ (4) Whenever otherwise authorized in an association's  
21          declaration or bylaws.



1 As used in this subsection, "mail voting" includes sending or  
2 receiving written ballots via mail, courier, or electronic  
3 transmission; provided that the transmission is a complete  
4 reproduction of the original."

5 SECTION 5. Section 514B-122, Hawaii Revised Statutes, is  
6 amended by amending subsection (a) to read as follows:

7 "(a) Minutes of meetings of the association shall be  
8 approved at the next succeeding regular meeting or by the  
9 board[~~, within sixty days after the meeting~~], if authorized by  
10 the owners at an annual meeting. If approved by the board,  
11 owners shall be given a copy of the approved minutes or notified  
12 of the availability of the minutes within thirty days after  
13 approval."

14 SECTION 6. Section 514B-123, Hawaii Revised Statutes, is  
15 amended by amending subsection (d) to read as follows:

16 "(d) A proxy, to be valid, shall:

17 (1) Be delivered to the secretary of the association or  
18 the managing agent, if any, no later than 4:30 p.m.  
19 Hawaii-Aleutian Standard Time on the second business  
20 day prior to the date of the meeting to which it  
21 pertains; and



1           (2) Contain at least the name of the association, the date  
2           of the meeting of the association, the printed names  
3           and signatures of the persons giving the proxy, the  
4           unit numbers for which the proxy is given, the names  
5           of persons to whom the proxy is given, and the date  
6           that the proxy is given."

7           SECTION 7. Section 514B-125, Hawaii Revised Statutes, is  
8 amended by amending subsection (b) to read as follows:

9           "(b) [~~Following any election of board members by the~~  
10 ~~association, the]~~ The board may[~~, at the board's next regular~~  
11 ~~meeting or at a duly noticed special meeting,~~] establish rules  
12 for owner participation in any deliberation or discussion at  
13 board meetings, other than executive sessions. A board that  
14 establishes such rules pursuant to this subsection:

- 15           (1) Shall notify all owners of these rules; and  
16           (2) May amend these rules at any regular or duly noticed  
17           special meeting of the board; provided that all owners  
18           shall be notified of any adopted amendments.

19 In lieu of notice, the board may make the rules available to  
20 owners on an association website."



1 SECTION 8. Section 514B-148, Hawaii Revised Statutes, is  
2 amended as follows:

3 1. By amending subsection (a) to read:

4 "(a) The budget required under section 514B-144(a) shall  
5 include at least the following:

6 (1) The estimated revenues and operating expenses of the  
7 association;

8 (2) Information as to whether the budget has been prepared  
9 on a cash or accrual basis;

10 (3) The total replacement reserves of the association as  
11 of the date of the budget;

12 (4) The estimated replacement reserves the association  
13 will require to maintain the property based on a  
14 reserve study performed by the association; provided  
15 that the reserve study shall be performed by an  
16 independent, certified reserve specialist, who shall  
17 not be affiliated with the managing agent of the  
18 association; provided further that the reserve study  
19 shall be prepared or updated at least every three  
20 years;



- 1 (5) A general explanation of how the estimated replacement  
2 reserves are computed;
- 3 (6) The amount the association must collect for the fiscal  
4 year to fund the estimated replacement reserves; and
- 5 (7) Information as to whether the amount the association  
6 must collect for the fiscal year to fund the estimated  
7 replacement reserves was calculated using a per cent  
8 funded or cash flow plan. The method or plan shall  
9 not circumvent the estimated replacement reserves  
10 amount determined by the reserve study pursuant to  
11 paragraph (4)."

12 2. By amending subsection (h) to read:

13 "(h) As used in this section:

14 "Capital expenditure" means an expense that results from  
15 the purchase or replacement of an asset whose life is greater  
16 than one year, or the addition of an asset that extends the life  
17 of an existing asset for a period greater than one year.

18 "Cash flow plan" means a minimum [~~twenty-year~~] thirty-year  
19 projection of an association's future income and expense  
20 requirements to fund fully its replacement reserves requirements  
21 each year during that [~~twenty-year~~] thirty-year period, except



1 in an emergency; provided that it does not include a projection  
2 of special assessments or loans during that [~~twenty-year~~  
3 thirty-year period, except in an emergency.

4 "Emergency situation" means any extraordinary expenses:

- 5 (1) Required by an order of a court;
- 6 (2) Necessary to repair or maintain any part of the  
7 property for which the association is responsible  
8 where a threat to personal safety on the property is  
9 discovered;
- 10 (3) Necessary to repair any part of the property for which  
11 the association is responsible that could not have  
12 been reasonably foreseen by the board in preparing and  
13 distributing the annual operating budget;
- 14 (4) Necessary to respond to any legal or administrative  
15 proceeding brought against the association that could  
16 not have been reasonably foreseen by the board in  
17 preparing and distributing the annual operating  
18 budget; or
- 19 (5) Necessary for the association to obtain adequate  
20 insurance for the property which the association must  
21 insure.



# H.B. NO. 2272

1 "Major maintenance" means an expenditure for maintenance or  
2 repair that will result in extending the life of an asset for a  
3 period greater than one year.

4 "Replacement reserves" means funds for the upkeep, repair,  
5 or replacement of those parts of the property, including but not  
6 limited to roofs, walls, decks, paving, and equipment, that the  
7 association is obligated to maintain."

8 SECTION 9. This Act does not affect rights and duties that  
9 matured, penalties that were incurred, and proceedings that were  
10 begun before its effective date.

11 SECTION 10. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13 SECTION 11. This Act shall take effect upon its approval.

14

INTRODUCED BY:



JAN 25 2022





# H.B. NO. 2272

**Report Title:**

Condominium Associations; Unit Owners; Declaration; Notice; Voting; Petitions; Meetings; Reserve Study

**Description:**

Permits sixty-seven per cent of unit owners to amend a condominium declaration. Requires developers to include annual reserve contributions based on a reserve study. Clarifies time and date requirements for petitions to amend bylaws and call for special meetings; electronic, machine, and mail voting during periods of emergency; time frame for approval of minutes; and board meeting participation. Requires a condominium association's reserve study to be performed by an independent, certified reserve specialist and prepared or updated at least every three years.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

